
EXHIBIT

L

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DUANE WHITE, Individually
and as the Surviving
Spouse of CATHERINE WHITE,

Plaintiff, Civ. Action No. 3:16-CV
03265

-vs-

STAR S.R.L. - an ICAP GROUP
COMPANY and DEVON INDUSTRIAL
GROUP, LLC,

Defendants.

_____/

VIDEOTAPED

DEPOSITION OF: MICHAEL A. TAUBITZ

DATE TAKEN: Wednesday, February 7, 2018

TIME: 3:09 p.m. to 6:46 p.m.

PLACE: SEA
13930 Lynmar Boulevard
Tampa, Florida 33626

REPORTED BY: Mary Ann Browne, FPR
Notary Public

Regency-Brentano, Inc.

Suite 104

13 Corporate Square

Atlanta, Georgia 30329

(404) 321-3333

1 long as we get an answer to the question that's
 2 pending.
 3 Okay?
 4 A Okay.
 5 Q Very good. So I understand that you
 6 are here as an expert on behalf of Star S.R.L.;
 7 is that correct?
 8 A Yes.
 9 Q What is your understanding of your
 10 role in this case?
 11 A I was asked to look at the case files
 12 and to render an opinion as to the
 13 responsibility of Carlex, Star, Mrs. White and
 14 other parties as to the cause of Mrs. White's
 15 death.
 16 Q Anything else?
 17 A No.
 18 Q Do we all agree that when Catherine
 19 White died, there was a safety fence missing
 20 that was supposed to be there?
 21 A Yes.
 22 Q And if the safety fence had been
 23 there, she would not have been killed, much less
 24 injured.
 25 Agreed?

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1 A She would not have been killed had she
 2 followed the energy control procedure.
 3 Q That wasn't my question. Again, sir,
 4 how could she have been killed if the safety
 5 fence had been there?
 6 A If the fence had there been, she would
 7 not have been killed.
 8 Q And if the fence had been there, she
 9 would not have been injured either, correct?
 10 A Correct. Injury is death.
 11 Q Did the lack of the fence there
 12 constitute a manufacturing defect in the machine
 13 system?
 14 MS. CARPENTER: Object to the form.
 15 A No.
 16 BY MR. SPECKHALS:
 17 Q Was it a problem that the fence panel
 18 was missing?
 19 A A problem?
 20 Q Yes.
 21 A Yes.
 22 Q And why was that a problem?
 23 A It's a problem because the employer
 24 should have assured that the fence was in place.
 25 Q I didn't ask who you believed was

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1 A Not necessarily.
 2 Q You do not agree with that?
 3 A I do not.
 4 Q You believe she could have been killed
 5 or injured even if the safety fence was there?
 6 A I believe that had she followed the
 7 established procedures for the control of
 8 hazardous energy for performing tasks that she
 9 would still be alive.
 10 Q Okay. That wasn't my question, sir.
 11 And I'll tell you that it's going to go a lot
 12 smoother if you will please answer my questions
 13 instead of giving a speech on what you'd like to
 14 say.
 15 Okay?
 16 MS. CARPENTER: I'm going to object.
 17 MR. SPECKHALS: Please read my
 18 question back.
 19 MS. CARPENTER: I object to that
 20 statement.
 21 (Record read back.)
 22 A I answered, not necessarily.
 23 BY MR. SPECKHALS:
 24 Q How could she have been killed if the
 25 safety fence was there?

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1 responsible. I'm asking, why was it a problem
 2 that the fence wasn't there?
 3 A Because the fence had been designed as
 4 part of the overall system, safeguarding system,
 5 to prevent someone from going into the cell
 6 inadvertently.
 7 Q Where was the machine that we're here
 8 about manufactured?
 9 A In Italy.
 10 Q And it was manufactured by Star?
 11 A Yes.
 12 Q Designed by Star?
 13 A Yes.
 14 Q And then it was taken apart and
 15 shipped to Tennessee, correct?
 16 A Yes.
 17 Q When it was put together in Tennessee,
 18 what do you call that?
 19 A I call that commissioning.
 20 Q And what do you mean by commission?
 21 A Commission is when you have a new
 22 machine that upon installation is now wired,
 23 debugged and made operational.
 24 Q Was it rebuilt in Tennessee?
 25 A It was rebuilt in the same manner my

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3 (Pages 6 to 9)

<p>1 understanding as the pre-acceptance runoff in 2 Italy.</p> <p>3 Q Was it reconstructed in Tennessee?</p> <p>4 A I would not use that term.</p> <p>5 Q Was it remanufactured in Tennessee?</p> <p>6 A No. It was just assembled. I mean, 7 it's a new machine for the Carlex plant. It's 8 been previously tried out and brought over to be 9 made operational at the Carlex facility.</p> <p>10 Q This -- and I've been calling it the 11 Star machine or the Star system. Do you prefer 12 that we call it something else?</p>	<p>1 A Well, they're there to prevent 2 inadvertent entry into a hazard area.</p> <p>3 Q And the reason for that is to prevent 4 injury or death, correct?</p> <p>5 A Sure.</p> <p>6 Q Who installed the Star machine at the 7 Carlex plant in Tennessee?</p> <p>8 A From having read the contracts and 9 looking in their specifications and talking 10 about having a forklift available, I believe it 11 was Devon that actually installed kind of the 12 base machine to get it in location along with</p>
<p>13 A No. That's fine.</p> <p>14 Q Was it an off the shelf machine or was 15 it a custom machine that Star designed and 16 manufactured?</p> <p>17 A It looked to be custom.</p> <p>18 Q Was it also turnkey?</p> <p>19 A Yes. It would be turnkey.</p> <p>20 Q Do you agree that the whole reason why 21 we have safety fences is to prevent injuries and 22 death?</p> <p>23 A That's part of the reason, yes.</p> <p>24 Q What other reasons are there for 25 having safety fences?</p> <p style="text-align: right;">Page 10</p>	<p>13 the fencing.</p> <p>14 Q What is your understanding of Star's 15 role in installation?</p> <p>16 A Again, that's commissioning. Once 17 it's installed, you just have a piece of 18 machinery that's not operational.</p> <p>19 So Star technicians now had to go in 20 and go through all the programming for all the 21 stops and make sure that the robot system was 22 operational, met quality specs, production, 23 safety, et cetera.</p> <p>24 Q Was Star involved in the installation 25 of the machine?</p> <p style="text-align: right;">Page 11</p>
<p>1 A They would have been involved in 2 commissioning.</p> <p>3 Q But have you -- when you define 4 commissioning, do you include installation or 5 install in the word commission?</p> <p>6 A No.</p> <p>7 Q So my question is: Was Star involved 8 in the installation of the machine?</p> <p>9 A I don't believe so. Again, I looked 10 at the documents. And based upon my own 11 personal past experience doing project 12 management, I believe that it was Devon that 13 would physically install the machine to the 14 given spot and that then Star technicians would 15 takeover to commission and debug.</p> <p>16 Q Did you read the Star depositions?</p> <p>17 A Yes.</p> <p>18 Q Whose depositions did you read from 19 Star?</p> <p>20 A Gosh, the names -- the Italian names, 21 I read them all. I'm not very good on names.</p> <p>22 Q Do you remember reading the Star 23 deposition from representative Paolo Marini?</p> <p>24 A Yes.</p> <p>25 Q And what do you recall about whether</p> <p style="text-align: right;">Page 12</p>	<p>1 he said Star was involved in the installation of 2 the machine?</p> <p>3 A I can't tell you.</p> <p>4 Q Would you defer to Star's statements 5 as to whether or not they were involved in the 6 installation of the machine?</p> <p>7 MS. CARPENTER: Object to the form. 8 You can answer.</p> <p>9 A No.</p> <p>10 BY MR. SPECKHALS:</p> <p>11 Q No?</p> <p>12 A I would not.</p> <p>13 Q So if Star said they were involved in 14 the installation of the machine, somehow you 15 would disagree with that?</p> <p>16 A I would from my understanding of how I 17 apply the ANSI standards that are applicable in 18 this case, because there are a lot of terms that 19 are used with overlap. And install, commission, 20 debug are those kinds of terms and there are 21 technical differences.</p> <p>22 Q Have you ever heard of start-up 23 installation?</p> <p>24 A I'm sure I have.</p> <p>25 Q What is start-up installation?</p> <p style="text-align: right;">Page 13</p>

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4 (Pages 10 to 13)

<p>1 who don't remember it, but my question in my own 2 mind is I expect this was properly installed and 3 that for whatever reason, and I have some 4 thoughts on this, for easy access to a printer 5 that malfunctions a lot, that very quickly that 6 things were changed. So that employees coming 7 up and seeing it might have thought that's the 8 way it was from the get-go.</p> <p>9 Q You're saying that the fence was moved 10 and changed, that employees that then came upon 11 it would think that's how it always was?</p> <p>12 A Yes.</p> <p>13 Q And would expect that's how it's 14 supposed to be?</p> <p>15 A And accept it particularly for a 16 printer that is giving them a lot of problems 17 with cleaning and maintaining production.</p> <p>18 Q In other words, wouldn't think 19 anything is out of the ordinary because it's 20 always been the way that they have seen it?</p> <p>21 A From my own experience, we did a 22 workaround. So I have faster access to get in 23 there and get this cotton picker fixed again 24 because I've got to clean the head and I'm 25 holding up production.</p> <p style="text-align: right;">Page 50</p>	<p>1 Q So getting back to the question of 2 credibility. Do you give more credibility to 3 the testimony of the Star and Devon people that 4 the safety fence was installed properly to begin 5 with than you give to the Carlex people that say 6 the safety fencing was never there?</p> <p>7 MS. CARPENTER: Object to the form.</p> <p>8 A I have tried to answer it, but I 9 would, yes.</p> <p>10 BY MR. SPECKHALS:</p> <p>11 Q There is no evidence that the safety 12 fence was ever moved, though, is there?</p> <p>13 A I have not seen that evidence, no.</p> <p>14 Q Who had the most expertise on how the 15 Star machine system should have been setup at 16 Carlex?</p> <p>17 A When you say "setup," operationally or 18 from a safety perspective?</p> <p>19 Q Well, let's break it down this way. 20 Star designed the machine, correct?</p> <p>21 A Yes.</p> <p>22 Q They manufactured the machine?</p> <p>23 A Yes.</p> <p>24 Q They had an installation supervisor 25 on-site at Carlex, correct?</p> <p style="text-align: right;">Page 51</p>
<p>1 A I would call him the commissioning 2 supervisor, yes.</p> <p>3 Q Well, is that what the contract called 4 him?</p> <p>5 A I'm not sure what the contract called 6 him. Again, I have my terminology that I use is 7 a technical reference back to my ANSI standards 8 to not confuse the difference between install, 9 commission and debug.</p> <p>10 Q Take a look at the second page again 11 of Alan Heap's memo and the second paragraph, 12 the top line.</p> <p>13 Do you see in that first line where he 14 said Star provided an installation supervisor 15 and another support person?</p> <p>16 A Uh-huh, I do.</p> <p>17 Q Do you disagree with his statement of 18 that?</p> <p>19 A I consider that that is the generic 20 term that gets used, that from a technical 21 perspective of how we lay out roles and 22 responsibilities in the applicable ANSI 23 standards that that is really a supervisor to 24 commission that machine.</p> <p>25 Are some people going to say, yep,</p> <p style="text-align: right;">Page 52</p>	<p>1 that's the installation, they do, but it's not 2 technically correct.</p> <p>3 Q Do you agree that Star had more 4 expertise on its machine than anyone else out 5 there?</p> <p>6 A Yes.</p> <p>7 Q Is anyone able to verify that the 8 safety fence was ever installed in the proper 9 place before Catherine White died?</p> <p>10 MS. CARPENTER: Object to the form.</p> <p>11 You can answer.</p> <p>12 A Again, my own experience and knowing 13 that within industry is that you're not going to 14 approve payment to Star until that machine has 15 come in and been installed absolutely to design 16 and the as-built drawings.</p> <p>17 BY MR. SPECKHALS:</p> <p>18 Q My question is: Can anyone verify 19 that that's what occurred here?</p> <p>20 A That's how I would verify that.</p> <p>21 MS. CARPENTER: Object to the form.</p> <p>22 Wait for me to object, please.</p> <p>23 BY MR. SPECKHALS:</p> <p>24 Q You recognize, though, that there have 25 been plenty of times where a company has paid</p> <p style="text-align: right;">Page 53</p>

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<p>1 supervisor. The supervisor went to shut down 2 the line. I'm sorry if I'm missing something. 3 Q Is it your belief she told the 4 supervisor she was going to go in and the 5 supervisor left knowing that that's what she was 6 going to do? 7 A It's my understanding that the 8 supervisor said, wait here, I'll go and get the 9 line shut down. 10 Q Okay. And so if she waited and did 11 not intentionally go into that area, do agree 12 that Lockout/Tagout did not apply? 13 A I'm trying to understand how she would 14 not intentionally go into the area. 15 Q Well, let me give you some examples. 16 She slipped, she fell, she lost track of where 17 she was and she accidentally entered the area 18 because there was no safety fence. 19 Do you hold open those are 20 possibilities? 21 A In looking at the area, I could not 22 begin to see the combination of circumstances 23 where she would have slipped, tripped and fall 24 and gotten her neck into that position. 25 Q Well, do you know of any reason why Page 70</p>	<p>1 she would have her neck down low in that 2 position if she was intentionally entering that 3 area? 4 A I don't. 5 Q And you know from the testimony of the 6 Carlex folks that being down low there would 7 have had nothing to do with the ink jet printer, 8 correct? 9 MS. CARPENTER: Object to the form. 10 A It's my understanding of -- I don't 11 know what she was doing. 12 BY MR. SPECKHALS: 13 Q Okay. So if you don't know what she 14 was doing, do you leave open the possibility 15 that she accidentally or inadvertently found 16 herself in the area where she was injured as 17 opposed to intentionally going in there? 18 A I'm sorry, I don't. 19 Q And you think that that is absolutely 20 impossible that that was the case? 21 MS. CARPENTER: Object to the form. 22 A I believe without knowing what she was 23 doing for troubleshooting, service or 24 maintenance that she intentionally went in 25 there. Page 71</p>
<p>1 BY MR. SPECKHALS: 2 Q But you don't even know when she was 3 there since no one witnessed this whether she 4 was still troubleshooting or doing something 5 actively to look at the problem, correct? 6 A I used the term troubleshooting 7 because we know we had a problem. 8 Q But you don't know exactly whether she 9 might have tripped. Even though you don't think 10 that's what happened, it could have, correct? 11 MS. CARPENTER: Object to the form. 12 A As soon as we knew that we were going 13 to do service and maintenance, you had an 14 affirmative obligation to follow the energy 15 control procedures. 16 BY MR. SPECKHALS: 17 Q Well, actually in this case, you saw 18 the testimony of Chris Herrmann, the safety guy 19 at Carlex, that there were no established 20 procedures for cleaning the ink jet printer, 21 correct? 22 A That's correct. 23 Q And you've written extensively as a 24 matter of fact on the fact that Lockout/Tagout 25 does not apply in certain circumstances such as Page 72</p>	<p>1 routine maintenance and situations that are 2 repeatedly needed to be done, correct? 3 A Now we're talking the technical 4 aspects of performing minor servicing. And, 5 again, from my observation and brief 6 questioning, Carlex had some excellent energy 7 control procedures for people to enter into 8 those kinds of minor servicing tasks. 9 They don't have to pull a 480 volt 10 disconnect, but they have disabled a machine in 11 a safer manner such that there will not be 12 unexpected energization. 13 MR. SPECKHALS: Can you read the 14 question back. 15 (Record read back.) 16 A Yes. 17 BY MR. SPECKHALS: 18 Q And in this case, it was talked about 19 that the ink jet printer had to routinely be 20 serviced, correct? 21 A Yes. 22 Q And it was nowhere near the robots 23 which created a hazard or danger, correct? 24 MS. CARPENTER: Object to the form. 25 A Well, there's hazards and risks other Page 73</p>

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<p>1 than just the robots. 2 BY MR. SPECKHALS: 3 Q My question was as to the robots. Do 4 you agree that you could service the ink jet 5 printer without getting anywhere near the danger 6 zone of the robots in this machine system? 7 MS. CARPENTER: Object to the form. 8 A That's not my understanding, because I 9 could go through any one of the three gates that 10 would now put the operation in safe position to 11 perform minor servicing. So I guess I'm. . . 12 BY MR. SPECKHALS: 13 Q Well, yeah, that's a totally different 14 thing, though. There you have the machine shut 15 down when you go through one of those three 16 interlock gates, correct? 17 A When you say shut down, you still have 18 control energy. You haven't shut the 480 19 disconnect down. 20 Q There's an interlock device when you 21 go through one of those three gates that shuts 22 the machine down, correct? 23 A Yes. 24 Q I'm not talking about that. I'm 25 asking if you agree that you could get up into</p> <p style="text-align: right;">Page 74</p>	<p>1 the area of the ink jet printer without being in 2 the zone of danger where the robots were? 3 A I would not say that. In fact, I 4 believe Carlex was deficient in not doing a risk 5 assessment when they moved that printer. It 6 should have been done both upon original 7 installation and when it was moved. 8 MR. SPECKHALS: Objection, 9 nonresponsive. 10 BY MR. SPECKHALS: 11 Q I didn't ask you that question. I'm 12 asking you simply, do you agree that you can get 13 into the area of the ink jet printer and service 14 it without being in the zone of danger of the 15 robots? 16 MS. CARPENTER: He answered that 17 question. 18 A Zone of danger of the robot, yes. 19 BY MR. SPECKHALS: 20 Q You are in the zone of danger? 21 A I agree, that you can get in without 22 being in the zone of danger of the robot. 23 Q Okay. And you believe that the area 24 where the ink jet printer was and the 25 windshields were coming off the conveyor was a</p> <p style="text-align: right;">Page 75</p>
<p>1 dangerous area, I take it? 2 A Yes. 3 Q Given, though, that you have written 4 about being able to service routine maintenance 5 on machines without doing the Lockout/Tagout 6 process, could that have applied here? 7 A I have written about where you do this 8 where it is not necessary to kill the primary 9 energy source which is called lockout. And that 10 the exception to the control of hazardous energy 11 in OSHA is for minor servicing where you're 12 using control circuitry, which was the Star 13 system and what Carlex. And do I think that's 14 safe? Yes. 15 Q Also on the -- well, strike that. 16 Have you read or are you familiar with Modern 17 Accident Investigation and Analysis? Have you 18 ever heard of that book? It's written by Ted 19 Ferry. 20 A My, gosh, back in the '80s, I read it 21 back then. 22 Q A pretty famous book for engineering? 23 A Back then. 24 Q Do you consider it authoritative and 25 reliable?</p> <p style="text-align: right;">Page 76</p>	<p>1 A It was before the concepts of risk 2 assessment ever took over. Back then it was 3 authoritative, but dramatically outdated today. 4 Q Well, do you recall that in that book 5 he talked about when you're analyzing and 6 looking at what happened when someone is 7 injured, that the analysis will lead you on a 8 trail seldom of the operator's own conscious 9 choosing? 10 Do you remember words to the effect of 11 that? 12 A I don't. I'll trust that they are 13 there. 14 Q Well, I'm paraphrasing, but have you 15 heard and do you recall his writings and 16 studies, that when employees get injured in a 17 situation in a factory, that it's seldom that 18 they intended to get themselves into that 19 situation? 20 A Oh, I would agree with that. 21 Q Do you agree that positive guarding of 22 a machine is always preferable to trying to 23 change the operator's or the employee's 24 behavior? 25 A No, because now it depends upon the</p> <p style="text-align: right;">Page 77</p>

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20 (Pages 74 to 77)

<p>1 something came through that I would be asked to 2 review for something, I might. 3 Q Have you been asked? 4 A No. 5 Q Have you been provided everything you 6 think you needed to look at? 7 A Yes. 8 Q Is there anything you wish you had or 9 feel you need that you have not been provided? 10 A I can't think of anything, no. 11 Q Go ahead and turn to page 6 of your 12 report, if you would, please. 13 A Okay. 14 Q Take a look at the last paragraph, 15 please. 16 A Yes. 17 Q Do you see where it says, "FDRsafety 18 was asked to review the case from a standpoint 19 of supplier, employer and employee obligations 20 under OSHA?" 21 A Yes. 22 Q When you say supplier, does that mean 23 Star? 24 A Yes. 25 Q As the designer and manufacturer? Page 86</p>	<p>1 A Yes. 2 Q And then whatever startup, 3 installation activities performed, would that be 4 part of supplier? 5 A Commissioning is part of that, yes. 6 Q And then, of course, employer would be 7 Carlex? 8 A Yes. 9 Q What would Devon be considered, Devon 10 Industrial? Would that be a supplier? 11 A They would be another supplier to 12 Carlex. 13 Q And when you said you were asked to 14 review the case from a standpoint of obligations 15 under OSHA, why were you asked, if you know, to 16 review it based upon standards under OSHA? 17 A Because OSHA is the law of this land. 18 It is what sets safety for employers and 19 employees. It's the OSH Act. 20 Q But it doesn't have anything to do 21 with the requirements of safety, design, 22 manufacture, installation on companies like Star 23 and Devon Industrial, correct? 24 A That's correct. 25 Q And you went on to say, "Specifically, Page 87</p>
<p>1 FDR was asked to determine whether Mrs. White, 2 Carlex, Star or Devon had responsibility for 3 Mrs. White's death." 4 Do you see that? 5 A Yes. 6 Q In your opinion, did Mrs. White have 7 any responsibility for her death? 8 A Yes. 9 Q Did Carlex have any responsibility for 10 her death? 11 A Yes. 12 Q Did Star have any responsibility? 13 A I can't find it, no. 14 Q Did Devon? 15 A No. 16 Q So you're blaming Catherine White and 17 her employer for Catherine White's death? 18 A I'm not blaming them. I'm assigning 19 the legal responsibility where it belongs. 20 Q You don't think that's blame? 21 A I don't think that's blame. 22 Q How is blame different than what you 23 just said? 24 A Blame is pointing a finger at someone 25 factually finding what happens in a case. And Page 88</p>	<p>1 in this case, when Carlex buys a piece of 2 equipment, they now, and Mr. Herrmann was very 3 good in his deposition a couple of times to say, 4 it was Carlex's responsibility. 5 They assumed the full legal 6 responsibility of that which they buy in for the 7 safe operation with their employees. 8 Q If Star and Devon put together or 9 install a dangerous or defective machine at 10 Carlex, is it your opinion that they are not 11 responsible for that? 12 A If Carlex buys off on that for 13 whatever they choose, why they would, I would 14 have no idea, but that is their legal 15 responsibility and that transition of risk and 16 hazard control goes to the user. 17 Q So you believe once Carlex buys off on 18 the machine that Carlex -- strike that. You 19 believe that once Carlex buys off on the 20 machine, that Star and Devon are relieved of any 21 responsibility? 22 MS. CARPENTER: Object to the form. 23 A I do. 24 BY MR. SPECKHALS: 25 Q I'm sorry? Page 89</p>

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23 (Pages 86 to 89)

<p>1 section is on ANSI B11.0 - 2015, correct?</p> <p>2 A Correct.</p> <p>3 Q When did ANSI B11.0 - 2015 take</p> <p>4 effect?</p> <p>5 A In 2010.</p> <p>6 Q Are you sure about that?</p> <p>7 A Yes. Before that, we had ANSI B11.0</p> <p>8 was a general standards requirement that</p> <p>9 transitioned to B11.0 in 2010. It was updated</p> <p>10 in 2015 and it's being updated as we speak.</p> <p>11 MR. SPECKHALS: Let's go ahead and</p> <p>12 mark this as Exhibit 24.</p> <p>13 (Exhibit 24 marked for</p> <p>14 identification.)</p> <p>15 BY MR. SPECKHALS:</p> <p>16 Q I'm going to hand you what we've</p> <p>17 marked as Exhibit 24. And do you recognize that</p> <p>18 as some excerpts and pages from ANSI B11.0 -</p> <p>19 2015?</p> <p>20 A Yes.</p> <p>21 Q And, in fact, I pulled the sections</p> <p>22 that you cited in your report. Flip through and</p> <p>23 see if you agree.</p> <p>24 A Yes. This is part of the overall</p> <p>25 standard.</p> <p style="text-align: right;">Page 94</p>	<p>1 Q What I'm saying is, you agree I pulled</p> <p>2 the sections that correspond to the sections you</p> <p>3 cited in your report?</p> <p>4 A Yes. It would appear to be that way,</p> <p>5 yes.</p> <p>6 Q Take a look at the first page of</p> <p>7 Exhibit 24, ANSI B11.0 - 2015 for me.</p> <p>8 A Okay.</p> <p>9 Q When was it approved?</p> <p>10 A 25 of August of 2015.</p> <p>11 Q Hence, the 2015 in the name of the</p> <p>12 standard, correct?</p> <p>13 A But this just updated the 2010</p> <p>14 standard.</p> <p>15 Q It's a different standard, correct?</p> <p>16 A No. It's an update.</p> <p>17 Q I can mark, and I guess we'll do that.</p> <p>18 Do you agree that ANSI B11.0 - 2010 has</p> <p>19 different language and says different things</p> <p>20 than ANSI B11.0 - 2015?</p> <p>21 A I'm sorry, I got lost on that.</p> <p>22 Q Is ANSI B11.0 - 2010 different than</p> <p>23 ANSI B11.0 - 2015?</p> <p>24 A Yes.</p> <p>25 Q Okay. And ANSI B11.0 - 2015, since it</p> <p style="text-align: right;">Page 95</p>
<p>1 wasn't approved until August 25th of 2015, it</p> <p>2 would not have even applied at the time the Star</p> <p>3 machine was manufactured and installed at Carlex</p> <p>4 in April and/or May of 2012, correct?</p> <p>5 A No. It would been -- right. It would</p> <p>6 have been in play at the time of the accident.</p> <p>7 Q As far as it applying to suppliers, as</p> <p>8 a supplier, Star and Devon were no longer out at</p> <p>9 Carlex in Tennessee in 2015, correct?</p> <p>10 A Correct.</p> <p>11 Q They were out there in 2012?</p> <p>12 A Yes.</p> <p>13 Q So the ANSI B11.0 dash whatever</p> <p>14 standard that would apply to them would have</p> <p>15 been the 2010 version, correct?</p> <p>16 A Correct.</p> <p>17 Q Why did you not use the ANSI B11.0 -</p> <p>18 2010 since that is what would have applied to</p> <p>19 Star and Devon?</p> <p>20 MS. CARPENTER: Object to the form.</p> <p>21 Go ahead.</p> <p>22 A And, again, I did that because of the</p> <p>23 most recent standard that was in play at the</p> <p>24 time of the accident.</p> <p>25 If I were to go back and look at the</p> <p style="text-align: right;">Page 96</p>	<p>1 vast majority of all of these figures and other</p> <p>2 things from 2010, they're essentially the same.</p> <p>3 Some of the language may have changed, but not</p> <p>4 substantially.</p> <p>5 The updates are just to -- each ANSI</p> <p>6 standard must be reaffirmed or updated each five</p> <p>7 years or it loses its status as a U.S. national</p> <p>8 standard.</p> <p>9 Q Can Devon and Star be held responsible</p> <p>10 for the machine we're here about based upon the</p> <p>11 ANSI B11.0 - 2015 standard?</p> <p>12 A No.</p> <p>13 Q That's because it didn't apply to them</p> <p>14 when they were doing their work, correct?</p> <p>15 A Right. It would have been the 2010</p> <p>16 version, you're correct.</p> <p>17 Q Yet, you did not analyze extensively</p> <p>18 in your report the 2010 version like you did the</p> <p>19 2015 version, correct?</p> <p>20 A I didn't go back to take those direct</p> <p>21 comparatives. And in retrospect, that's a very</p> <p>22 good point that you bring up. Again, I used the</p> <p>23 most recent one because of the time of the</p> <p>24 accident.</p> <p>25 I do know from my own knowledge, I'm</p> <p style="text-align: right;">Page 97</p>

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<p>1 on this committee, that all of the basics that 2 are in here for supplier and user and 3 responsibilities are essentially the same. 4 Q But if you're using a version that did 5 not even apply to Star and Devon, do you agree 6 that it would be difficult if not impossible to 7 find that they had responsibility or fault since 8 you're using a standard that didn't even apply 9 to them? 10 MS. CARPENTER: Object to the form. 11 A Again, counselor, I agree with you. 12 My knowledge, I can tell you that the bases of 13 these things, you'll find these same pictures 14 and diagrams and probably 98 percent of the 15 words from 2010 the same as 2015. 16 And I did use the most recent standard 17 because of the date of the accident, but you're 18 also correct, it would have been 2010 that would 19 apply to Star and Devon. 20 BY MR. SPECKHALS: 21 Q There were some changes that were 22 significant, though, between the 2010 and the 23 2015 version; were there not? 24 MS. CARPENTER: Object to the form. 25 A Well, I would have to go back and</p> <p style="text-align: right;">Page 98</p>	<p>1 review. I can't tell you right off the top of 2 my head. The basics of roles, responsibilities, 3 I don't remember any major changes made in these 4 areas. 5 VIDEOGRAPHER: We're off the record. 6 The time is 5:02 p.m. We are back on the 7 record. The time is 5:02 p.m. 8 (Exhibit 25 marked for 9 identification.) 10 BY MR. SPECKHALS: 11 Q I'm going to hand you what we have 12 marked as Exhibit 25. Do you recognize that as 13 the similar sections covering similar topics? 14 A Yes. 15 Q From your report with the ANSI B11.0 - 16 2010? 17 A I do. 18 Q Did you make a conscious decision to 19 use the 2015 standard in your report? 20 A Yes. 21 Q And you said the reason for that was 22 because that would have been the one in effect 23 when Catherine White died on January 22, 2016? 24 A Yes. 25 Q If that's the case then, turn to page</p> <p style="text-align: right;">Page 99</p>
<p>1 10, please. 2 A Of 2010? 3 Q Of your report, I'm sorry. Turn to 4 page 10 of your report, which we marked as 5 Exhibit 23 for those following along. 6 A Okay. 7 Q You copied a chart out of the ANSI 8 B11.0 standard, correct? 9 A Yes. 10 Q Why is it, though, that you copied the 11 2010 version into your report rather than the 12 2015? 13 A I think here because, and I'm just 14 going to go back, that I did recognize the 15 supplier and user relationship in place at the 16 time. 17 I think we'll find no change to 2015, 18 but consciously, I was trying to use that 19 diagram that to me gets at the meat of supplier 20 and user relationships for Carlex and Devon. 21 Q Well, actually, there was a 22 substantial change in the diagram between 2010 23 and 2015. 24 Take a look at page 25 of Exhibit 25, 25 which is the 2010 version and now take a look at</p> <p style="text-align: right;">Page 100</p>	<p>1 page 17 of Exhibit 24, which is the 2015 2 version. 3 A Okay. 4 Q Do you agree that the pictures or 5 diagrams -- strike that. Do you agree that the 6 figure is different, the diagram is different? 7 A Yes. 8 Q And, in fact, in the 2015 version, 9 which you did not use in your report despite 10 using 2015 for everything else, it shows that 11 the supplier has responsibility for the 12 installation and the debugging of the machine. 13 correct? 14 A When part of purchase agreement, yes. 15 Q Yet, the version that you went back to 16 for this and only this section of your report, 17 the 2010 version, has the installation and 18 debugging only being the responsibility of the 19 user, correct? 20 A Correct. 21 Q Was that a conscious decision that you 22 made there? 23 A Yes. 24 Q So if you had used the 2015 version 25 for your diagram, it would have provided that</p> <p style="text-align: right;">Page 101</p>

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<p>1 A Based upon what we know of the fence 2 not being in proper position, that should have 3 been picked up at both the original installation 4 of the printer and the movement of it. 5 MR. SPECKHALS: Objection, 6 nonresponsive. 7 BY MR. SPECKHALS: 8 Q I'm just asking you. When they moved 9 the printer, was there any need to move the 10 fence? 11 A I would have said yes. 12 Q What's the evidence and testimony? 13 Was there any movement of any fence when they 14 moved the printer? 15 A No. 16 Q So the printer could be moved without 17 the need for moving the fence, correct? 18 A That's the problem. They -- 19 Q I'm asking you, yes or no. Physically 20 could the printer be moved without moving the 21 fence? 22 A Yes. 23 Q And physically the printer was moved 24 without moving the fence? 25 A Yes.</p> <p style="text-align: right;">Page 106</p>	<p>1 Q In your report at the bottom of page 2 9, you make the statement that ANSI clearly 3 identifies Carlex as having primary 4 responsibility to install and debug the 5 machinery and equipment in preparation for 6 production. 7 Do you see that? 8 A U-huh, yes. 9 MS. CARPENTER: Well, it says 10 commission in parenthesis. 11 BY MR. SPECKHALS: 12 Q Does that change my question to you? 13 MS. CARPENTER: I want it to -- if 14 you're reading, I want you to read it 15 accurately for the record. 16 MR. SPECKHALS: Go ahead, Brigid. Do 17 you want to read it? I'm asking him a 18 generic question. 19 BY MR. SPECKHALS: 20 Q Does it say that or does it not say 21 that? Do you think I read it inaccurately that 22 it changes your answer? 23 A I've kind of lost what now was asked. 24 Q I'll read it exactly to comply with 25 what Brigid would like and I'm going to ask you</p> <p style="text-align: right;">Page 107</p>
<p>1 a question about this. 2 Okay? 3 A Okay. 4 Q You wrote, "ANSI B11.0 clearly 5 identifies the user, Carlex, as having primary 6 responsibility to install and debug, 7 parenthesis, commission, end parenthesis, 8 machinery and equipment in preparation for 9 production operation." 10 Do you see that? 11 A Yes. 12 Q Did I read that correctly? 13 A Yes. 14 Q Where in ANSI does it identify Carlex 15 as having primary responsibility for that 16 installation and debugging? 17 A When you turn the page and you look at 18 the diagram, Carlex is the user. 19 Q And that's because you're saying that 20 the picture shows installation and debugging 21 under the user which is Carlex? 22 A Yes. 23 Q But if you had used the updated 2015 24 version which you used through the rest of your 25 report, it shows that installation and debugging</p> <p style="text-align: right;">Page 108</p>	<p>1 is also Star's responsibility, correct? 2 A Correct. 3 Q And as far as this picture or diagram, 4 which is actually listed as a figure in the 5 standards, is it, for lack of a better word, the 6 Bible? Is it unchangeable, you have to look at 7 everything exactly how this picture is? 8 A No. It's a guideline for roles and 9 responsibilities on how things work. 10 Q And, in fact, when you look at that 11 drawing, the ANSI standards specifically 12 recognize that it's just that, a guideline. 13 In other words, it is not something 14 that is in stone that must be done as far as 15 responsibilities exactly as it's written, 16 correct? 17 A It is a U.S. national standard that is 18 voluntary for suppliers and users to use. 19 Q Well, flip to Exhibit 24, the ANSI 20 B11.0 - 2015. 21 A Okay. 22 Q And flip to pages 16 and 17. 23 A Yes. 24 Q And you recognize the diagram that you 25 copied and pasted into page 10 of your report,</p> <p style="text-align: right;">Page 109</p>

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<p>1 responsibility?</p> <p>2 MS. CARPENTER: Object to the form.</p> <p>3 Go ahead.</p> <p>4 A If I were to redo my words with that</p> <p>5 kind of thinking, but, again, this is a mix of</p> <p>6 my background, experience, knowing who is</p> <p>7 legally responsible of coming in.</p> <p>8 And the fact that this particular</p> <p>9 figure in play at time shows that</p> <p>10 responsibility. And I will stand corrected if</p> <p>11 there is a better choice of words.</p> <p>12 BY MR. SPECKHALS:</p> <p>13 Q Okay, but when you keep saying legal</p> <p>14 responsibility, you understand you're not here</p> <p>15 to give legal responsibility opinions, you're</p> <p>16 here to give engineering standards opinions,</p> <p>17 right?</p> <p>18 MS. CARPENTER: Object to the form.</p> <p>19 A I'm here to assist people in knowing</p> <p>20 whether or not they would be ultimately in</p> <p>21 compliance with OSHA from a technical</p> <p>22 standpoint.</p> <p>23 BY MR. SPECKHALS:</p> <p>24 Q Okay, but Star and Devon are never</p> <p>25 going to be out of compliance with OSHA in this</p> <p style="text-align: right;">Page 118</p>	<p>1 case since it doesn't apply to them, right?</p> <p>2 A Yes, correct.</p> <p>3 Q Let's take a look at the 2010 standard</p> <p>4 a little bit more, which you do agree applies to</p> <p>5 Star and Devon, correct?</p> <p>6 A Yes.</p> <p>7 Q As suppliers?</p> <p>8 A Yes.</p> <p>9 Q Do you see on page 24 of ANSI B11.0 -</p> <p>10 2010 where at the bottom it says in turnkey</p> <p>11 situations, the interaction can be extensive?</p> <p>12 A Yes.</p> <p>13 Q And it's talking about the interaction</p> <p>14 between the supplier and user, correct?</p> <p>15 A Yes.</p> <p>16 Q And that interaction can involve the</p> <p>17 installation, the debugging, the installation,</p> <p>18 the safeguarding, all of those things, correct?</p> <p>19 A Yes.</p> <p>20 Q And it's referring to the fact that</p> <p>21 when you have a customer turnkey project like we</p> <p>22 had in this case, the supplier, meaning Star, is</p> <p>23 going to be much more involved than the</p> <p>24 comparison they make where you just buy a</p> <p>25 machine off the shelf and have no involvement</p> <p style="text-align: right;">Page 119</p>
<p>1 with the supplier, right?</p> <p>2 A Correct.</p> <p>3 Q Would you agree that based upon the</p> <p>4 testimony in this case that indeed Star and</p> <p>5 Devon did have a lot of interaction and</p> <p>6 collaboration with Carlex?</p> <p>7 A Yes.</p> <p>8 Q In getting this machine reconstructed</p> <p>9 or setup, installed at the plant?</p> <p>10 A Yes.</p> <p>11 Q When the machine, the Star machine was</p> <p>12 put into the Carlex plant, would that be</p> <p>13 considered constructing the machine there?</p> <p>14 MS. CARPENTER: Object to the form.</p> <p>15 A No. I would consider that installing</p> <p>16 and commission.</p> <p>17 BY MR. SPECKHALS:</p> <p>18 Q What's construction? It usually means</p> <p>19 to build something, right?</p> <p>20 A Yeah.</p> <p>21 Q Were they building the machine on-site</p> <p>22 at the Carlex plant?</p> <p>23 A I think of construction when</p> <p>24 oftentimes I have several pieces of equipment</p> <p>25 possibly even from different suppliers coming</p> <p style="text-align: right;">Page 120</p>	<p>1 together for integration.</p> <p>2 Again, these are terms that are not</p> <p>3 easily defined because there's so much variable</p> <p>4 in the way they are used in the industry.</p> <p>5 Q So could someone interpret what was</p> <p>6 going on at Carlex as constructing the machine?</p> <p>7 MS. CARPENTER: Object to the form.</p> <p>8 A I guess.</p> <p>9 BY MR. SPECKHALS:</p> <p>10 Q And then take a look at page 26 of the</p> <p>11 ANSI B11.0 - 2010 standard. Take a look</p> <p>12 particularly at paragraph 4.4.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Do you see where it says, "The</p> <p>16 supplier shall use the risk assessment process</p> <p>17 in designing and constructing the machine?"</p> <p>18 Do you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q And then it goes on and says, "And for</p> <p>21 developing the information for operation and</p> <p>22 maintenance of the machinery considering the</p> <p>23 lifecycle of the machine," correct?</p> <p>24 A Yes.</p> <p>25 Q So, obviously, the lifecycle means how</p> <p style="text-align: right;">Page 121</p>

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<p>1 long this machine is going to be usable before 2 it has to be decommissioned and taken apart and 3 no longer used, right? 4 A Yes. 5 Q The information for operation and 6 maintenance of the machinery, that has to do 7 with the operations and maintenance manual, 8 correct? 9 A Correct. 10 Q The designing of the machine is 11 self-explanatory. That's when you design what 12 the machine is going to be, correct? 13 A Yes. 14 Q And then it says in constructing the 15 machine. Constructing the machine, meaning 16 putting it together, correct? 17 A Yes. 18 Q When the supplier, in this case Star 19 and Devon are putting together the machine, are 20 they supposed to do a risk assessment in writing 21 or is that something that can just be done 22 without recording it? 23 A That's already been done by Star. 24 Q And what about 4.5, paragraph, 4.5, 25 installation, commissioning and start-up? Page 122</p>	<p>1 That's where it says, "The user and supplier 2 shall ensure that the risks associated with the 3 installation, commissioning and start-up of the 4 machinery are reduced to an acceptable level," 5 correct? 6 A Yes. 7 Q And that means when they say user and 8 supplier, that means a collaborative effort, 9 right? 10 A Yes. 11 Q Meaning that Star is supposed to be 12 involved in that too? 13 A Sure. Star has to have appropriate 14 procedures in place for the protection of their 15 own technicians, because, in fact, they are 16 working on the machines before the final design 17 safeguards are fully in place. 18 Q But you saw the testimony of Star that 19 they were there to start-up the machine, 20 correct? 21 A Yes. 22 Q To start it up for -- the start-up 23 installation so it then could be used to put 24 into production for windshields? 25 A Correct. When you're done with Page 123</p>
<p>1 commissioning and debugging, you're there to 2 start-up the machine for production. 3 Q And was that proper and appropriate 4 for Star to be involved in the installation, 5 debugging and start-up like that? 6 A Yes. 7 Q And did they have responsibility to do 8 their work competently and properly? 9 A Yes. 10 Q And you saw their testimony, that as 11 part of that, they were supposed to check all 12 safety systems on the machine and production 13 line, correct? 14 A Yes. 15 Q And make sure that everything was done 16 properly? 17 A Yes. 18 Q And if they failed to do that, they 19 would have failed in meeting their 20 responsibilities, they being Star, correct? 21 MS. CARPENTER: Object to the form. 22 A Yes, if they failed. 23 BY MR. SPECKHALS: 24 Q Then in 4.6, if you look down a little 25 bit further, do you see under safeguarding, it Page 124</p>	<p>1 says, "The supplier shall provide safeguarding 2 as determined in the supplier risk assessment 3 and the appropriate machine-specific standard?" 4 A Yes. 5 Q So that means that Star needed to 6 provide the safeguarding, in this case, safety 7 fencing, right? 8 A And interlocks and the disconnects and 9 the full gamut, yes. 10 Q And if they failed to do that, they 11 would have violated what they should have done, 12 correct? 13 A Yes. 14 Q It talks about on the next page, 4.8, 15 training of user personnel. 16 A Yes. 17 Q In this case, did you see that Star 18 provided training to the Carlex people? 19 A You mean formal type training? 20 Q Exactly. 21 A I didn't see that, no. That's not 22 part of industry practice. 23 Q So when you've been talking about your 24 knowledge of how things are typically done, if 25 Star provided the training, that would not be in Page 125</p>

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